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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,906	02/14/2007	Angeline Ingrid Bartholomeusz	19781	7415

272 7590 10/08/2009  
SCULLY, SCOTT, MURPHY & PRESSER, P.C.  
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SUITE 300  
GARDEN CITY, NY 11530

EXAMINER
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BOESEN, AGNIESZKA

ART UNIT	PAPER NUMBER
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1648

MAIL DATE	DELIVERY MODE
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10/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/576,906	BARTHOLOMEUSZ ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	AGNIESZKA BOESEN	1648	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-34, 39-49 and 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-38, 50 and 51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br/> Paper No(s)/Mail Date <u>6/2/09; 4/16/07 and 10/23/06</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/> Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
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### **DETAILED ACTION**

This Non-Final Office Action is responsive to the communication received June 25, 2009.

#### ***Election/Restrictions***

Applicant's election with traverse of group II, claims 35-38, 50 and 51 is acknowledged. Applicant argues that the restriction of the claims at this stage would deny Applicants the opportunity to argue whether the claims are novel over the prior art. In response the Examiner notes that Applicants have the opportunity to argue the novelty of the claimed invention in Applicant's response to this Office action.

Bartolomeusz (WO 2003/066841 A1) teaches the shared technical feature of the claimed invention as discussed in the rejection under 35 USC § 102(b) below. Because the prior art teaches the shared technical feature of the present invention the claims lack unity and therefore the restriction is set forth as it applies to U.S. practice. The restriction is thus deemed proper and is made FINAL.

Claims 1-34, 39-49 and 52 are withdrawn because they are drawn to the non-elected invention. Claims 35-38, 50 and 51 are under examination in this Office Action.

#### ***Information Disclosure Statement***

The information disclosure statements (IDS) submitted on 6/2/2009, 4/16/2007 and 10/23/2006 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the Examiner.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 35-38, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartholomeusz (WO 2003/066841 A1 August 14, 2003).**

Bartholomeusz discloses a method for determining the potential for an HBV to exhibit reduced sensitivity to a nucleoside or nucleotide analog LMV, comprising isolating DNA from HBV and screening for a mutation in the nucleotide sequence encoding HBV DNA polymerase resulting in an amino acid substitution in domains F and A through E, F and G and A through E and associated with resistance to LMV, wherein the mutation is the DNA polymerase is rtM204V and wherein the mutation in the surface protein is sI195M (see claims 1-24, page 6, lines 20-25, page 7, page 18, page 27, 28, page 30, lines 1-6, page 33, lines 4-19, Example 5, Example 16 and Figure 11).

Thus by this disclosure Bartholomeusz anticipates the present claims.

***Conclusion***

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AGNIESZKA BOESEN whose telephone number is (571)272-8035. The examiner can normally be reached on Monday through Friday from 9:00 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached at 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Agnieszka Boesen/  
Examiner, Art Unit 1648